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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,116	11/07/2001	Curtis C. Ballard	10005002-1	2123

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EXAMINER

ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/007,116

Applicant(s)

BALLARD, CURTIS C.

Examiner

David E. England

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 - 12, 14 - 20 and 22 - 25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 2 - 12, 14 - 20 and 22 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 23-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 26 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 2 – 12, 14 – 20 and 22 – 25 are presented for examination.

Election/Restrictions

2. Newly submitted claims 23 – 25 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly submitted claims discuss the use of a “repair logic” that is communicatively coupled with a “network card” capable of communicating malfunction of a appliance to a remote server, which is not present in the originally presented claim language.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23 – 25 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “said second message instructs said networked device manager to cause said networked device to use redundant hardware” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “said second message instructs said networked device manager to cause a reconfiguration of said networked device” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 2, 3, 5, 6 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Conrad et al. U.S. Patent No. 6892236 (hereinafter Conrad).

7. As per claim 22, as closely interpreted by the Examiner, Conrad teaches a data collection and transmittal system, the system comprising:

8. a networked device, connected to a digital network, performing a dedicated stand-alone function, (e.g., col. 5, line 49.– col. 6, line 23);

9. data collection logic configured to collect information pertaining to said networked device's ability to perform said standalone function, (e.g., col. 5, line 49 – col. 6, line 23);

10. message generation logic configured to recognize a trigger event, associated with networked device's ability to perform said standalone function, and configured to generate an electronic message containing at least a portion of said collected information, (e.g., col. 5, line 49 – col. 6, line 23, "*report*"); and

11. a remote server configured to receive said electronic message over said digital networked and to determine an action to be taken with respect to said networked device, (e.g., col. 5, line 49 – col. 6, line 23).

12. Referencing claim 2, Conrad teaches said data collection logic is further configured to collect performance information from said networked device indicative of at least one performance criteria, wherein said performance information is included in said collected information, (e.g., col. 5, line 49 – col. 6, line 23).

13. Referencing claim 3, Conrad teaches said message generation logic is responsive to an elapsed time, (e.g., col. 6, line 61 – col. 7, line 24).

14. Referencing claim 5, Conrad teaches said digital network comprises the Internet, (e.g., col. 4, lines 39 – 51).

15. Referencing claim 6, Conrad teaches said collected information contains error information, (e.g., col. 11, lines 5 – 24).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 4, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad as applied to claims 22 and 2 above, and in view of Reichman U.S. Patent No. 6738813.

18. Referencing claim 4, Conrad does not specifically teach said message generation is responsive to a message received from said remote server. Reichman teaches said message generation is responsive to a message received from said remote server, (e.g. col. 8, lines 44 – 55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with Conrad because it would be more efficient for a system to update their records about specific devices in a network by requesting specific devices to transmit updated information about their activities.

19. Referencing claim 7, Conrad does not specifically teach a non-human networked device manager at least partially defined by software components, said networked device manager responsive to a second message which directs said networked device manager to perform a specific action. Reichman teaches a non-human networked device manager at least partially defined by software components, said networked device manager responsive to a second message which directs said networked device manager to perform a specific action, (e.g. col. 8, lines 26 – 43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with Conrad because utilizing a network device manager could aid in the requesting of updated information about specific devices that could be in error and causing lack of performance in the network.

20. Referencing claim 10, Conrad does not specifically teach said second message instructs said networked device manager to cause a reconfiguration of said networked device. Reichman

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teaches said second message instructs said networked device manager to cause a reconfiguration of said networked device, (e.g. col. 6, lines 35 – 48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with Conrad because if devices in the network are faulty and cause errors in the network which hinder the performance of the system reconfiguring a network device that is faulty could aid in the maintenance and performance of a system.

21. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad and Reichman as applied to claims 22 and 7 above, and in view of Oskay et al. (5642337) (hereinafter Oskay).

22. As per claim 8, as closely interpreted by the Examiner, Conrad and Reichman do not specifically teach said networked device is jukebox. Oskay teaches said networked device is jukebox, (e.g. col. 3, lines 51 – 67). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Oskay with the combine system of Conrad and Reichman because it is more efficient and common to use a jukebox storage device for large collections of files, such as data bases, image files and video files

23. As per claim 9, as closely interpreted by the Examiner, Conrad and Reichman do not specifically teach said second message instructs said networked device manager to cause said networked device to use redundant hardware. Oskay teaches teach said second message instructs said networked device manager to cause said networked device to use redundant hardware, (e.g.

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col. 3, lines 32 – 50). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Oskay with the combine system of Conrad and Reichman because it is more efficient for a system to utilize a type of backup service to ensure that if one system fails or has an error a backup or slave hardware device can take over.

24. Claims 11 and 16 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad and Reichman as applied to claims 1 and 12, and in view of Moberg et al. (6738826) (hereinafter Moberg).

25. As per claim 11, as closely interpreted by the Examiner, Conrad and Reichman do not specifically teach said second message instructs said networked device manager to replace a software module contained within said networked device with a replacement software module, (e.g. col. 1, line 61 – col. 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Moberg with the combine system of Conrad and Reichman because it would be more efficient for a system to have the ability to upgrade the software in a device so the device can handle more information or to process information faster than previously done with the older software.

26. As per claim 16, Conrad does not teach said trigger event is the detection of an error condition. Reichman teaches said trigger event is the detection of an error condition, (e.g., col. 6, lines 18 – 34). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Reichman with the combine system of Conrad and Moberg

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because it would be more efficient for a system to attempt to correct an error that is detected so a system as fewer error.

27. As per claim 17, Conrad does not specifically teach said trigger event is the receipt of a message. Reichman teaches said trigger event is the receipt of a message, (e.g. col. 8, lines 44 – 55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with the combine system of Conrad and Moberg because of similar reasons stated in the rejection of claim 4 and others above.

28. Claims 18 and 19 are rejected for similar reasons stated above and more specifically in claims 4 and 7.

29. Claim 12, 14, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad and Moberg.

30. As per claim 12, as closely interpreted by the Examiner, Conrad teaches a method of performance monitoring comprising the steps of:

31. collecting information from a networked device pertaining to an ability of said network device to perform a function, (e.g., col. 5, line 49 – col. 6, line 23);

32. receiving a trigger event related to said device's ability to perform said function, (e.g., col. 5, line 49 – col. 6, line 23);

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33. organizing at least a portion of said collected information into a message, (e.g., col. 5, line 49 – col. 6, line 23);

34. transmitting said message to a server in response to receiving said trigger event, (e.g., col. 5, line 49 – col. 6, line 23); and

35. automatically analyzing said message, (e.g., col. 5, line 49 – col. 6, line 23), but does not specifically teach to determine an appropriate modification of said network device. Moberg teaches automatically analyzing said message to determine an appropriate modification of said network device, (e.g., col. 1, line 61 – col. 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Moberg with Conrad because of similar reasons stated above.

36. As per claim 14, Conrad teaches said information contains error information, (e.g., col. 11, lines 5 – 24).

37. As per claim 15, Conrad teaches said trigger event is an elapsed time, (e.g., col. 6, line 61 – col. 7, line 24).

38. As per claim 20, Conrad teaches said message is transmitted over a digital packet network, (e.g., col. 6, line 61 – col. 7, line 24).

Response to Arguments

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39. Applicant's arguments with respect to claims 2 – 12, 14 – 20 and 22 – 25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

40. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

41. a. Lister et al. U.S. Patent No. 6167446 discloses Automatically configuring network-name-services.

42. b. Emaru et al. U.S. Patent No. 6807575 discloses Performance monitoring method in a distributed processing system.

43. c. Porras et al. U.S. Patent No. 6321338 discloses Network surveillance.

44. d. Spicer et al. U.S. Patent No. 6591298 discloses Method and system for scheduling measurement of site performance over the internet.

45. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

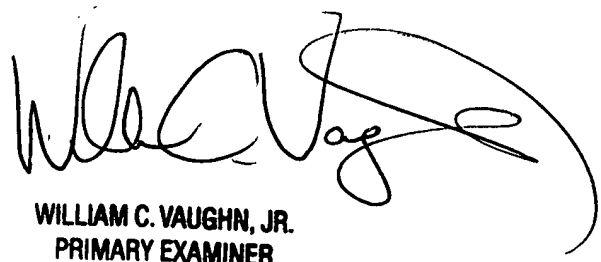
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David E. England
Examiner
Art Unit 2143

De



WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER